

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WARREN DURHAM JR.,)	C.A. No. 04-297 Erie
Plaintiff)	District Judge McLaughlin
V.)	
)	
CITY AND COUNTY OF ERIE,)	
ET AL.)	
Defendants.		

NOTICE OF APPEAL

COMES NOW, Warren Durham Jr., moving pro se, and pursuant to Title 28 Section 1292(c)(1), gives Notice of his intent to appeal to the United States Court of Appeals for the Third Circuit. The Third Circuit have exclusive jurisdiction of an appeal from an interlocutory order of the district court. On April 2, 2006, the Plaintiff received from the United States District Court an Order dated March 31, 2006, denying Plaintiff's Motion Requesting Interlocutory Appeal.

Grounds for appeal exist in that Plaintiff's constitutional rights to a fair trial were violated by Defendants McElynn and Anthony, causing liability to the County of Erie. That McElynn obtained false statements and testimony from Defendants Tackett, Washburn, and Durkin, which the Supreme Court made clear that he has no absolute immunity. Nor does McElynn have absolute immunity for comments made to the media. See: Buckley v. Fitzsimmons, 113 S.Ct. 2606 (1993).

WHEREFORE, it is requested that Plaintiff's appeal shall proceed.

Respectfully submitted,


WARREN DURHAM JR.

FILED
06 APR -7 AIO:41
CLERK
U.S. DISTRICT COURT

AFFIDAVIT

COMES NOW, the Affiant undersigned, Warren Durham Jr., and affirm that he is the Plaintiff in the above caption matter, and avers the above are true and correct subject to Title 18, Section 1621 U.S.C.


WARREN DURHAM JR.
AFFIANT

DATED: 4/5/06

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WARREN DURHAM JR.,)	C.A. No. 04-297 Erie
Plaintiff)	
V.)	District Judge McLaughlin
)	
CITY AND COUNTY OF ERIE,)	
ET AL.)	
Defendants.)	


CERTIFICATE OF SERVICE

I, Warren Durham Jr., hereby certify that a true and correct copy of the foregoing "Notice of Appeal" shall be served upon the persons named below by mailing same FIRST CLASS, postage prepaid, U.S. Mail, to:

Kemal Alexander Mericli, Esq.
Senior Deputy Attorney General
564 Forbes Avenue
Pittsburgh, Pa. 15219

Edmond R. Joyal, Esq.
975 Two Chatham Center
Pittsburgh, Pa. 15219

Mark E. Mioduszewski, Esq.
120 West Tenth Street
Erie, Pa. 16501


WARREN DURHAM JR.
12119 MATHERSON AVE.
CLEVELAND, OH. 44135

DATED: 4/5/06